

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:  
  
TRACK 1 TRIALS

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**PLAINTIFFS' MOTION TO CERTIFY NATIONWIDE CLASSES 2 AND 3 AGAINST  
DEFENDANTS ASTRAZENECA AND BMS**

Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), Plaintiffs move for an order certifying the following nationwide classes 2 and 3 against Defendants AstraZeneca and BMS:

**Class 2: Third-Party Payor MediGap Supplemental Insurance Class:**

All Third-Party Payors who made reimbursements for drugs based on AWP for a Medicare Part B covered Subject Drug that was manufactured by AstraZeneca (AstraZeneca, PLC, Zeneca, Inc., AstraZeneca Pharmaceuticals L.P., and AstraZeneca U.S.) or the BMS Group (Bristol-Myers Squibb Co., Oncology Therapeutics Network Corp., and Apothecon, Inc.).

**Class 3: Consumer and Third-Party Payor Class for Medicare Part B Drugs Outside of the Medicare Context:**

All natural persons who made, or who incurred an obligation enforceable at the time of judgment to make, a payment for a physician-administered Subject Drug that was manufactured by AstraZeneca (AstraZeneca, PLC, Zeneca, Inc., AstraZeneca Pharmaceuticals L.P., and AstraZeneca U.S.) or the BMS Group (Bristol-Myers Squibb Co., Oncology Therapeutics Network Corp., and Apothecon, Inc.); and all Third-Party Payors who made reimbursements based on contracts expressly using AWP as a pricing standard for a physician-administered Subject Drug that was manufactured by AstraZeneca or the BMS Group. Included

within this Class are natural persons who paid coinsurance (*i.e.*, co-payments proportional to the reimbursed amount) for a Subject Drug, where such coinsurance was based upon use of AWP as a pricing standard. Excluded from this Class are any payments or reimbursements for generic drugs that are based on MAC and not AWP.

This motion is supported by Plaintiffs' Memorandum of Law in Support of Motion to Certify Nationwide Classes 2 and 3 Against Defendants AstraZeneca and BMS, along with Exhibits A through C attached thereto, as well as prior briefing in this case related to the issue of class certification.

Plaintiffs also submit herewith a proposed order that modeled after the Court's January 30, 2006 Order Re: Motion for Class Certification (Docket No. 2097-1).

DATED: November 21, 2007.

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**CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE**

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on November 21, 2007, I caused copies of **PLAINTIFFS' MOTION TO CERTIFY NATIONWIDE CLASSES 2 AND 3 AGAINST DEFENDANTS ASTRAZENECA AND BMS** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

**/s/ Steve W. Berman**

Steve W. Berman